

May 1, 2003

D.T.E. 98-AD-5

Adjudicatory Hearing in the Matter of the Complaint of Joseph Pezzulo Relative to the Rates and Charges for Electricity Sold by Boston Edison Company d/b/a NSTAR Electric.

APPEARANCES: Joseph Pezzulo
Apartment 208
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PRO SE
Complainant

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FOR: BOSTON EDISON COMPANY
d/b/a NSTAR Electric
Respondent

I. INTRODUCTION

On February 21, 1997, an informal hearing was held before the Consumer Division of the Department of Telecommunications and Energy ("Department") on the complaint of Joseph Pezzulo ("Complainant") relative to the rates and charges for electricity sold by Boston Edison Company d/b/a NSTAR Electric ("Company" or "Respondent"). The Complainant was dissatisfied with the informal hearing decision and requested an adjudicatory hearing before the Department pursuant to 220 C.M.R. § 25.02(4)(c). The matter was docketed as D.T.E. 98-AD-5.

Pursuant to notice duly issued, an adjudicatory hearing was held on August 20, 1998 at the Department's offices in Boston, in conformance with the Department's Regulations on Billing and Termination Procedures, 220 C.M.R. §§ 25.00 et. seq. The Complainant testified on his own behalf. In addition, the Complainant sponsored the testimony of Bruce Fondren, a witness who lived in the same apartment during the billing periods in dispute. The Respondent sponsored the testimony of Gale Marchione, a consumer affairs representative for the Company. The evidentiary record consists of 18 exhibits and five record requests.

II. SUMMARY OF ISSUES

The Complainant disputes three catch-up bills¹ for electric service consumed at 150 Worcester Street #4, Boston, Massachusetts (the "Residence"): (1) a bill reconciling three estimated and one actual reads during the period October 22, 1993 through

¹ A "catch-up bill" is a billing adjustment for the difference between the amount the Company billed using estimated meter reads and the amount billed using an actual meter reading.

February 18, 1994, totaling \$762.39 (“First Bill”); (2) a bill reconciling three estimated and one actual reads during the period November 12, 1994 through February 22, 1995, totaling \$494.31 (“Second Bill”); and (3) a bill reconciling eight estimated and one actual reads during the period September 14, 1995 through May 31, 1996, totaling \$1,361.02 (“Third Bill”) (collectively, the “Disputed Bills”) (Exh. BECo-1; Tr. at 15).² The Complainant asserts that he is not responsible for the Disputed Bills totaling \$2,617.72, arguing that the Company was grossly negligent by not reading the electric meter for a period of eight months (Tr. at 11-12). The Complainant maintains that the Company failed to monitor its employees’ productivity and that, although the Complainant sent several letters attempting to rectify the proceedings, the Company did not follow up (Exhs. CM-1, CM-4A, CM-6, CM-7; Tr. at 10). The Complainant argues that this situation resulted in the Company manifesting a reckless disregard of the Department’s regulations (Tr. at 10). The Complainant further argues that the catch-up bills are “adhesion contracts” (id. at 9-10). The Company contends that the Complainant is responsible for the Disputed Bills as they represent the amount of electricity the Complainant actually consumed as measured by an accurate meter (id. at 9, 106). The Company contends that (1) the Complainant was billed on a monthly basis and (2) it resolved these billing problems for the First and Second Bills within a reasonable time not exceeding six months

²

The Complainant paid the estimated bills rendered during the periods of the Disputed Bills (Exh. BECo-1).

(id. at 106). The Company points out that, while the Third Bill is based on an actual meter read after eight estimated reads and over a time period of 8.5 months, it has voluntarily reduced the bill by \$340.30 and rebilled the Complainant \$1,020.72 (Exh. BECo-1; Tr. at 106).

III. SUMMARY OF FACTS

A. The Complainant

The Complainant testified that the Residence is located in a four-unit building and that the meters for the building are located in the basement (Tr. at 32-33). The Complainant further testified that the Company gained access to the meters via one of the tenants (id. at 33). The Complainant also stated that there usually was someone in the building at all times, and that between September 14, 1995 and May 31, 1996, the Complainant made himself available for the meter readings (id. at 33, 40). The Complainant testified that he called the Company's customer service offices to dispute the First Bill in February or March of 1994 (id. at 29). On April 14, 1995, Complainant wrote a letter to the Company requesting a resolution of his complaint regarding the First Bill (see Exh. BECo-4). On this same date, the Complainant also filed a complaint concerning the Company with the Department's Consumer Division (Exh. BECo-4).

The Complainant testified that he wrote additional letters to the Company between February 1, 1996 and May 8, 1996, requesting resolution of his complaints regarding the Disputed Bills (Exhs. CM-4A, CM-6, CM-7; Tr. at 55; see also Exh. CM-1). In addition, the Complainant testified that he went in person to the Company's Prudential Building offices on

May 8, 1996 to discuss the Disputed Bills and to deliver a complaint letter to a Company customer service representative (Exhs. CM-4A, CM-4B; Tr. at 23).

The Complainant testified that he requested that the Company conduct meter tests throughout the disputed billing period (Tr. at 18, 20-21). The Complainant testified that he requested to be notified of all meter reads so that he could be present, but that he was only able to attend one inspector meter read on May 19, 1994 because the Company failed to give him advance notice (id. at 28, 39, 41-43, 69).

B. The Company

The Company testified that the Company was contacted by the Complainant in March 1994 after he received a high catch-up bill (Tr. at 55). The Company testified that it responded to this and to the Complainant's other requests by performing special meter reads (id. at 55-56). The Company stated that it performed two tests on the meter at the Residence (id. at 51-53). The first test was a watt-hour meter test performed on August 24, 1994, to confirm the accuracy of the meter (Exh. BECo-2; Tr. at 51-52). The Company testified that the meter was within the Department's standard deviation requirement, and thus accurate (Tr. at 52). The second test was a meter flash test and field investigation conducted on June 2, 1995 to determine whether the Residence was attached to the correct meter (Exh. BECo-3; Tr. at 53). According to the Company, the test showed that the Complainant's Residence was attached to the correct meter (Exh. BECo-3; Tr. at 53).

The Company testified that its records did not conclusively show why, during the period from February 1, 1996 to May 8, 1996, the Company did not respond to the

Complainant's certified letters, phone calls, and actual visits to the customer service center (Tr. at 56). The Company speculated that because the Complainant requested involvement from the Department's Consumer Division in April of 1995, the Company ceased to deal directly with the Complainant (id. at 78). Instead, the Company testified that it is the Company's usual practice to allow the Consumer Division to interact with a customer who has filed a complaint with the Department (id. at 77-78). The Company testified that it believes the meter flash test conducted on June 2, 1995 was at the Consumer Division's request (id. at 78; see also Exh. BECo -3). In contrast to the Company's usual practice when the Department is involved, the Company concedes the Company did send the Complainant a letter on June 8, 1995 discussing the meter flash test results (Exh. CM-5; Tr. at 79).

IV. STANDARD OF REVIEW

A. Estimated Bills

Department regulations require a company to render actual readings at least every other billing period. Billing and Termination Procedures of the Department of Telecommunications and Energy, 220 C.M.R. § 25.02(2). The company may render estimated bills only if it follows the procedures specified in 220 C.M.R. § 25.02(2)(a), which provide in part:

(3) The company had either scheduled readings for times other than normal business hours, or attempted by mail or by telephone to make an appointment with the customer, and provided cards on which the customer may record the reading; and

(4) The company has not rendered an estimated bill to the customer for the billing period immediately preceding that for which the estimate is made.

In addition, Department regulations provide for specific circumstances where a company may render estimated billing for any billing period. 220 C.M.R. § 25.02(2)(b) provides in pertinent part:

[T]he company may render an estimated bill for any billing period in which:

- (1) The customer has knowingly or willfully denied reasonable access to the company's representatives for the purpose of taking an actual reading of the meter;
- (2) The customer has otherwise made an actual reading of the meter unnecessarily difficult; or
- (3) Circumstances beyond the control of the company make an actual reading of the meter extremely difficult.

Where a company fails to render actual bills absent excused circumstances enumerated above, the company may be found in violation of the Department's regulations. The Department has held that a company has a duty to render regular current-use bills. Boston Gas Company v. Singletary, D.P.U. 84-86-53 (1985). This duty is grounded on the principle that a customer, in order to regulate his/her use, must receive regular, accurate bills. Van Buskirk v. Boston Gas Company, D.P.U. 3 (1982); Weldon v. Bay State Gas Company, D.P.U. 20064 (1979). When a company issues successive estimated bills, the large catch-up bill which accumulates puts an undue burden on the customer. This is precisely the unfortunate result our regulations were designed to avoid. Boston Gas Company v. Cesaitis, D.P.U. 84-86-69 (1986); see also Commonwealth Gas Company v. Markowski, D.P.U. 84-19 (1985).

B. Abatement

The Department has consistently found that the issuance of consecutive estimated bills for more than six months constitutes a failure to meet a service obligation in violation of

Department regulations warranting the remedy of an abatement. Boston Edison Company v. Lowe, D.P.U. 1190 (1993); Bell v. Boston Edison Company, D.P.U. 47 (1982). The appropriate remedy is to reduce the catch-up bill by the portion attributable to the period beginning six months after the previous actual company meter reading. Myers v. Boston Edison Company, D.P.U. 90-AD-26 (1994), Cesaitis, D.P.U. 84-86-69; Moore v. Boston Edison Company, D.P.U. 20051 (1982); see Hairston v. Boston Gas Company, D.P.U. 85-AD-26 (1987) (Department found company had violated its service obligation in disregard of Department regulations where company failed to render any bills for nine months); see also Boston Gas Company v. Cook, D.P.U. 1422 (1984).

The Department has held that when a company demonstrates extremely poor quality of service, thereby depriving the customer of reasonable price or consumption signals, the Department may take into consideration the overall billing history and order an abatement. Sharpe v. Boston Edison Company, D.P.U. 92-AD-6 (1994). There are very few ways the Department can monitor a company's efficiency. One way is for the Department to look at the results of the utility's operations, and specifically at the quality of service provided to its customers. Where a company has exhibited a consistent pattern of disregard for a regulation of the Department in an individual case, the Department may view its conduct as evidence that management has failed to properly monitor the efficiency of its operations. In the extreme case where an abatement is found to be appropriate because of errors by company employees, the Department has found that the loss should be borne by the party ultimately responsible for the

actions of company employees, which is the company. It would be discriminatory to charge the loss to ratepayers. Thomas v. Boston Edison Company, D.P.U. 93-AD-30 (1994); Fall River Gas Company, D.P.U. 18416 (1976); Boston Edison Company, D.P.U. 18515 (1976). The Supreme Judicial Court (“SJC”) has upheld such action by the Department as an exercise of the Department’s general supervisory authority under G.L. c. 164, § 76, describing a company’s efficiency as a matter “of legitimate public interest.” Boston Edison Company v. Department of Public Utilities, 375 Mass. 1, 43-44 (1978).

V. ANALYSIS AND FINDINGS

A. Estimated Bills

The first issue the Department must decide is whether the three estimated meter reading incidents violated Department regulations and policies. The Complainant’s billing history shows a series of estimated bills in contravention of the Department’s regulations, which require a company to render actual readings at least every other billing period.

220 C.M.R. § 25.02(2). The company may render estimated bills only if it follows the procedures specified in 220 C.M.R. § 25.02(2)(a)(3) – (4). In addition, Department regulations provide for specific circumstances where a company may render estimated billing for any billing period. 220 C.M.R. § 25.02(2)(b)(1) – (3). To justify estimated reads the Company has the burden to show specific excused circumstances enumerated in 220 C.M.R. § 25.02(2)(b). The record contains no conclusive evidence as to the reasons for estimated reads. The evidence shows that the electric meters were in the basement of the

apartment building and that the Company could typically gain access to the meters by one of the tenants (Tr. at 33).

While the Company presented evidence of a notation in the Complainant's account stating that the "key [is] no good," there was no date associated with this potential access problem (id. at 76). The Company was unable to detail any specific incidents or circumstances when the Company tried but could not enter the apartment building to do a meter reading (id. at 77). In fact, the Complainant testified that, for at least the period covered by the Third Bill, he made himself available for meter readings (id. at 40). The record contains no evidence that the Complainant knowingly or wilfully denied reasonable access or otherwise made actual readings unnecessarily difficult. In addition, there is no evidence that circumstances beyond the control of the Company made actual readings difficult. We find that the Company has not shown that any of the excused circumstances for an estimated bill enumerated under 220 C.M.R. § 25.02(2)(b) were present for the time periods of the Disputed Bills and, therefore, find that the Company is in violation of the Department's regulations.

B. Quality of Service

Having determined that the Company violated Department regulations in issuing estimated bills, the Department must decide whether the Company's quality of service and efficiency constitute a disregard of Department regulations justifying a full abatement. The Complainant argues that the Company failed to address the infrequent meter reading problem (Tr. at 10-12). The Complainant argues that this situation resulted in a total disregard of the Department's regulations (id. at 10). Further, the Complainant asserts that the Company's

conduct in allowing eight months of estimated meter reads for an account already in dispute reaches “levels of reckless disregard and gross negligence in handling this dispute” (id. at 104-105).

Where a company has exhibited a consistent pattern of disregard for a regulation of the Department in an individual case, the Department may view its conduct as evidence that management has failed to properly monitor the efficiency of its operations. Thomas, D.P.U. 93-AD-30; Fall River Gas Company, D.P.U. 18416; Boston Edison Company, D.P.U. 18515. Also, the Department has held that when a company demonstrates extremely poor quality of service, thereby depriving the customer of reasonable price or consumption signals, the Department may take into consideration the overall billing history and order an abatement. Sharpe, D.P.U. 92-AD-6.

Of the three instances where a series of estimated bills were rendered, the First Bill and the Second Bill involve three estimates and one catch-up bill (Exh. BECo-1; Tr. at 15). Although the Department generally finds that periods of less than six consecutive estimates should be remedied by a payment plan rather than abatement, the Department has ordered a full abatement in cases involving six or fewer estimates where such estimates followed a series of estimated bills, or deprived a customer of accurate pricing signals. See Cesaitis, D.P.U. 84-86-69; Williams v. Commonwealth Gas Company, D.P.U. 1298 (1983); Van Buskirk, D.P.U. 3; Moore, D.P.U. 20051. When extended periods of estimated readings are followed by further periods of estimated reading and high catch-up bills, the Department

has found that the proper remedy with respect to the catch-up bill is to abate all charges with the exception of amounts rendered via estimated readings. Thomas, D.P.U. 93-AD-30, at 15.

A review of the overall billing history shows a pattern of failing to provide actual readings to the Complainant for a period of time dating back to 1993 in violation of the Department's regulations (Exh. BECo-1). As shown on Table 1 below, during the period from September 5, 1993 through May 31, 1996 there were a total of 34 meter readings, consisting of 22 estimated readings, eight actual readings, two special readings, one customer reading, and one inspector reading.

TABLE 1: METER READINGS AND AMOUNTS BILLED

Transaction Date	Description/ Period Covered	Type of Reading	Reading	KWH	Dollar Amount
9/5/93	Installed	Actual	77313		
9/22/93	Bill 9/5/93 - 9/22/93	Estimated	77479	166	\$20.92
10/22/93	Bill 9/22/93 - 10/22/93	Actual	78332	853	\$96.45
11/22/93	Bill 10/22/93 - 11/22/93	Estimated	78970	638	\$77.15
12/23/93	Bill 11/22/93 - 12/23/93	Estimated	79696	726	\$87.57
1/21/94	Bill 12/23/93 - 1/21/94	Estimated	80325	629	\$76.73
2/18/94	Bill 1/21/94 - 2/18/94	Actual	87312	6987	\$762.39
3/27/94	Bill 2/18/94 - 3/27/94	Customer	89399	2087	\$233.73
5/19/94	Bill 3/27/94 - 5/19/94	Inspector	90617	1218	\$145.73
6/22/94	Bill 5/19/94 - 6/22/94	Actual	91314	697	\$84.90
7/25/94	Bill 6/22/94-7/25/94	Estimated	92025	711	\$86.44
8/23/94	Bill 7/25/94 - 8/23/94	Estimated	92620	595	\$73.36
9/22/94	Bill 8/23/94 - 9/22/94	Estimated	93247	627	\$76.96
10/24/94	Bill 9/22/94 - 10/24/94	Estimated	93903	656	\$80.22
11/12/94	Bill 10/24/94 - 11/12/94	Special	96252	2349	\$269.43

11/22/94	Bill 11/12/94 - 11/22/94	Estimated	96580	328	\$39.66
12/21/94	Bill 11/22/94 - 12/21/94	Estimated	97661	1081	\$130.00
1/24/95	Bill 12/21/94 - 1/24/95	Estimated	98835	1174	\$140.57
2/22/95	Bill 1/24/95 - 2/22/95	Actual	103122	4287	\$494.31
3/23/95	Bill 2/22/95 - 3/23/95	Estimated	104938	1816	\$213.52
4/21/95	Bill 3/23/95 - 4/21/95	Estimated	106676	1738	\$204.67
6/2/95	Bill 4/21/95 - 6/2/95	Special	107006	330	\$45.22
6/22/95	Bill 6/2/95 - 6/22/95	Estimated	107705	699	\$85.36
8/22/95	Bill 6/22/95 - 7/1/95	Actual	107992	287	\$35.23
9/14/95	Bill 7/1/95 - 9/14/95	Actual	110558	2566	\$342.88
10/17/95	Bill 9/14/95 - 10/17/95	Estimated	111687	1129	\$136.81
11/13/95	Bill 10/17/95 - 11/13/95	Estimated	112565	878	\$99.11
12/14/95	Bill 11/13/95 - 12/14/95	Estimated	113658	1093	\$121.63
1/12/96	Bill 12/14/95 - 1/12/96	Estimated	114749	1091	\$121.42
2/13/96	Bill 1/12/96 - 2/13/96	Estimated	115975	1226	\$132.27
3/15/96	Bill 2/13/96 - 3/15/96	Estimated	116962	987	\$107.89
4/12/96	Bill 3/15/96 - 4/12/96	Estimated	117776	814	\$90.23
5/13/96	Bill 4/12/96 - 5/13/96	Estimated	118731	955	\$106.78
5/31/96	Final Bill 5/13/96 - 5/31/96	Actual	131739	13008	\$1,361.02

(Exh. BECo-1).

Moreover, the estimated meter readings for the periods covered by the Disputed Bills were extremely low, failing to provide the Complainant with accurate pricing signals to regulate his usage.

Table 2 below indicates that the average monthly amount billed for the period covered by the First Bill is \$250.96, while, as shown on Table 1, the three monthly estimated bills for this period are \$77.15, \$87.57 and \$76.73. The estimated bills are approximately 31 percent,

35 percent and 31 percent of the average monthly amount billed, respectively. Likewise, the average monthly amount billed for the Second Bill period is \$241.60, and the estimated bills for this period are \$39.66, for a ten-day period, and \$130.00 and \$140.57 for the following two monthly periods. The monthly estimated bills are approximately 54 percent and 58 percent of the average monthly amount billed. Finally, the average monthly amount billed for the Third Bill period is \$308.24, while the eight monthly estimated bills for this period are as follows: (1) \$136.81; (2) \$99.11; (3) \$121.63; (4) \$121.42; (5) \$132.27; (6) \$107.89; (7) \$90.23; and (8) \$106.78. The percent of the average monthly amount billed for these eight estimates are as follows: (1) 44 percent; (2) 32 percent; (3) 39 percent; (4) 39 percent; (5) 43 percent; (6) 35 percent; (7) 29 percent; and (8) 35 percent. As shown by this analysis, the estimated bills covering the monthly periods for the Disputed Bills were consistently low, with eleven of the 13 estimates equaling less than one-half of the average monthly amounts billed. Of these eleven low estimates, four are less than one-third of the average monthly amounts billed.

TABLE 2: AVERAGE MONTHLY USAGE AND AVERAGE MONTHLY AMOUNTS BILLED

First Bill 10/22/93 - 2/18/94	Usage (KWH)	Average Monthly Usage (KWH)	Amount Billed (4 Mos.)	Average Monthly Amount Billed
	8980	2245	\$1,003.84	\$250.96
Second Bill 11/12/94 - 2/22/95	Usage (KWH)	Average Monthly Usage (KWH)	Amount Billed (3.33 Mos.)	Average Monthly Amount Billed
	6870	2063	\$804.54	\$241.60

Third Bill 9/14/95 - 5/31/96	Usage (KWH)	Average Monthly Usage (KWH)	Amount Billed (8.5 Mos.)	Average Monthly Amount Billed
	21181	2492	\$2,620.04	\$308.24

(Exh. BECo-1)

The Department finds that the estimated bills for the periods covered by the Disputed Bills did not provide the complainant with the type of price and consumption signals the Departments regulations aim to provide. Thomas, D.P.U. 93-AD-30, at 15; see also Van Buskirk, D.P.U. 3; Weldon, D.P.U. 20064. Accordingly, consistent with Department precedent, and in the interest of sending consumers accurate price signals, the Department will allow the Company to bill the Complainant only for amounts rendered via estimated bills during the periods covered by the Disputed Bills. Thomas, D.P.U. 93-AD-30, at 15; Sharpe, D.P.U. 92-AD-6, at 12-13. Therefore, the Department finds that the Company shall abate \$762.39 for the First Bill and \$494.31 for the Second Bill. For the Third Bill, the Company shall abate \$1,020.72, an amount equal to the \$1,361.02 total amount less the \$340.30 previously abated. The Company's total abatement amount shall be \$2,277.42.

C. Other Issues

Finally, the Department addresses the Complainant's argument that the Company created an adhesion contract³ (Tr. at 9) and unjustly required the Complainant "to rely on the

³ Black's Law Dictionary defines an "adhesion contract" as a "[s]tandardized contract form offered to consumers of goods and services on [an] essentially 'take it or leave it' basis . . . under such conditions that [the] consumer cannot obtain desired product or (continued...)

company's agents to test our potentially defective meter" (id. at 22). In FMR Corp. v. Boston Edison Co., et al., 415 Mass. 393 (1993) the SJC held that the furnishing of electricity is not in the realm of contract law, and that the tariff in question did not create a contract.

"Furthermore, it must be understood that the extensive regulation of Edison's rates and practices takes the furnishing of electricity out of the realm of contract law." FMR Corp., 415 Mass. at 396 , citing Boston Edison Co. v. Boston, 390 Mass. 772, 776 -777 (1984). The Department determines, therefore, that the Complainant's allegation that he was made party to an adhesion contract is without merit.

³(...continued)

services except by acquiescing in [a] form contract. [The] [d]istinctive feature of [an] adhesion contract is that [the] weaker party has no realistic choice as to its terms." Black's Law Dictionary 40 (6th ed. 1990).

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the bill rendered to Joseph Pezzulo for the period October 22, 1993, through February 18, 1994, totaling \$762.39, shall be abated; the billed rendered to Joseph Pezzulo for the period November 12, 1994 through February 22, 1995, totaling \$494.31, shall be abated; and the bill rendered to Joseph Pezzulo for the period September 14, 1995 through May 31, 1996, totaling \$1,361.02, shall be abated by \$1,020.72. The total abatement amount for the three bills shall equal \$2,277.42.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).